

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

UNITED STATES OF AMERICA,

Plaintiff,

v.

HERBERT BRECKENRIDGE PORTER,

Defendant.

Case No. 2:00-CR-0086-KJD-PAL

ORDER

Presently before the Court is Defendant's Motion for Retroactive Application of Sentencing Guidelines (#49). Plaintiff seeks to have the Court modify his sentence pursuant to 18 U.S.C. § 3582(c)(2) and Amendment 742 of the United States Sentencing Guidelines ("the guidelines").

The Sentencing Commission has amended the guidelines to eliminate "recency points" from the sentencing calculation. U.S. Guidelines Manual, Supp. to App. C, Amend. 742 at 354–56 (2011) ("Amend.742"). The guidelines provide that when a change is not designated as retroactive, it is not to have retroactive effect to reduce a prison term. See U.S. Guidelines Manual § 1B1.10(a)(2). The change implemented by Amendment 742 is not designated as retroactive. § 1B1.10(c) (not listing Amend. 742). In fact, the Sentencing Commission explicitly chose not to make it retroactive. See U.S. v. Ruiz-Apolonio, 657 F.3d 907, 918 (9th Cir. 2011).

1 Accordingly, **IT IS HEREBY ORDERED** that Defendant's Motion for Retroactive
2 Application of Sentencing Guidelines (#49) is **DENIED**.

3 DATED this 18TH day of April 2012.

4
5 

6 _____
7 Kent J. Dawson
8 United States District Judge
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26